

paid the \$1,300 Man and Siah became subject to the obligation to re-transfer the land to him. That was the time for the performance of the obligation and it was for the performance of that obligation under the contract that the plaintiff brought the present proceedings. In the circumstances it seems clear to me that the proceedings were subject to the provisions of section 22 of the Kedah Limitation Enactment. That Enactment was repealed by the Federation Limitation Ordinance which came into force on 19th February, 1953, but section 34 of that Ordinance expressly provides that nothing in it is to enable any action to be brought which was barred before its commencement by any Enactment repealed by it.

Section 22 of the Kedah Enactment reads as follows:—

"No suit for the specific performance of a contract shall be brought after the expiration of three years to be calculated from the time fixed for the performance, or where no such time is fixed from the time when performance is demanded and refused."

It is to be noted that by section 33 the calculation of time is to be made according to the Muslim calendar, under which the year is 354 or 355 days according as to whether it is a *kabisat* year. Reckoning from 14th June, 1939, the period of three years prescribed by the section would have expired on some date in April, 1942. By reason, however, of the Limitation (Enemy Occupation) Ordinance, 1946, and the Moratorium Proclamation (Repeal) Ordinance, 1949, limitation did not run from 1st January, 1942, until 1st October, 1949. In the present case, therefore, the period expired about the middle of 1950 (it is unnecessary to calculate the precise date) when the Kedah Enactment was still in force and the present proceedings were not commenced until 12th August, 1958. In my view then, the present proceedings were barred by limitation.

I would add that I am not unmindful of the argument of Counsel for the respondent that by reason of the decision of this Court in *Ponnusamy & anor. v. Nathu Ram*⁽¹⁾ this was an action for the recovery of land and that therefore by reason of the provisions of the Limitation Ordinance the period of limitation was six years. Alternatively he argued that whether or not the obligation arose *ex contractu* there was also an equitable obligation to transfer the land and here again, but in this case by reason of section 26 of the Kedah Enactment, the period of limitation was six years. Frankly I think there is very little substance in either argument. I do not, however, propose to discuss the points at length for by reason of section 33 of the Kedah Enactment, which has already been mentioned, calculations for the purposes of it are to be made according to the Mohammedan calendar. Calculating according to that calendar and making allowance for the suspension of limitation during the war a period of six years from 14th June, 1939, expired on 8th January, 1953, that is before the repeal of the Kedah

A Enactment and some years before the commencement of the present proceedings.

I would allow the present appeal with costs here and in the Court below and order that the deposit in Court be paid out to the appellant.

Good J.A. and Smith J. concurred.

Appeal allowed.

THE COMPTROLLER OF INCOME TAX, SINGAPORE v. DIA SINGH

[C. A. (Rose C.J., Chua and Wee Chong Jin JJ.)
December 17, 1959]

[Singapore — Civil Appeal No. 22 of 1959]

C *Practice and Procedure — Appearance — Whether an Assistant Comptroller of Income Tax may appear on behalf of the Comptroller under s.90 of the Income Tax Ordinance (Cap.166) — "May appear personally" — Meaning of.*

D *Bankruptcy — Petition — Whether Assistant Comptroller of Income Tax may present petition under s.4 of the Bankruptcy Ordinance (Cap.11) — "Creditor" in income tax matters.*

In this appeal two points arose, (i) whether an Asst. Comptroller of Income Tax may appear on behalf of the Comptroller under section 90 of the Income Tax Ordinance; and (ii) whether an Asst. Comptroller of Income Tax may present a petition under section 4 of the Bankruptcy Ordinance read together with section 90(1) of the Income Tax Ordinance.

E **Held:** (1) having regard to the definition of "Comptroller" in section 2 of the Income Tax Ordinance, a Dy. Comptroller or an Asst. Comptroller of Income Tax is included in the term Comptroller in section 90(2) of the Income Tax Ordinance and may appear on the Comptroller's behalf. The adverb "personally" in section 90(2) of the Ordinance is used in antithesis to "by counsel" and does not bear the implication that the Comptroller must appear in person;

F (2) in income tax matter the "creditor" is the Comptroller of Income Tax, and for the purpose of the Bankruptcy Ordinance no other person can be included in this term.

COURT OF APPEAL. Appeal from the decision of Ambrose J.

G B. J. Jeyaretnam (Crown Counsel) for the appellant.

Respondent did not appear.

Cur. Adv. Vult.

Rose C.J.: Two points arise in this appeal. First, may an Assistant Comptroller of Income Tax appear on behalf of the Comptroller under section 90 of the Income Tax Ordinance?

H Subsection (2) of the section reads as follows:—

"The Comptroller may appear personally or by counsel in any suit instituted under this section."

I In section 2 of the Ordinance "Comptroller" is defined as meaning "the Comptroller appointed under section 5 of this Ordinance and includes, for all purposes of this Ordinance except the exercise of the powers conferred upon the Comptroller by sections 95, 96 and 99 of this Ordinance, a Deputy Comptroller or an Assistant Comptroller so appointed."

Having regard to this definition I consider that a Deputy Comptroller or an Assistant

Comptroller is included in the term Comptroller in section 90(2) of the Ordinance and may appear on the Comptroller's behalf. The adverb "personally" is, in my view, used in antithesis to "by counsel" and does not bear the implication that the Comptroller (notwithstanding the definition in the interpretation section) must appear in person.

I would add, although this is not the reason for my conclusion, that the interpretation which I favour has the advantage of being administratively convenient.

Secondly, may an Assistant Comptroller of Income Tax present a petition under section 4 of the Bankruptcy Ordinance read together with section 90(1) of the Income Tax Ordinance?

Section 4 of the Bankruptcy Ordinance reads as follows:—

"Subject to the conditions hereinafter specified, if a debtor has committed an act of bankruptcy, the Court may on a bankruptcy petition being presented, either by a creditor or by the debtor make an order for the protection of the estate, which order is in this Ordinance called a receiving order."

Unlike the Income Tax Ordinance, the definition section of the Bankruptcy Ordinance does not contain any provision to the effect that where the creditor is the Comptroller of Income Tax a bankruptcy petition may be presented either by him in person or by a Deputy Comptroller or an Assistant Comptroller.

That being so, I am not disposed to import into the Bankruptcy Ordinance any such qualification of the term "creditor". In income tax matters the creditor is the Comptroller of Income Tax; and for the purpose of the Bankruptcy Ordinance no other person, in my opinion, can be included in this term.

I am happy to learn that in this matter no appreciable administrative inconvenience is involved by my interpretation, as I am informed from the Bar that on an average not more than a dozen such petitions are presented on behalf of the Income Tax Department in the course of a year.

In the result, therefore, the appeal is dismissed. The respondent was not represented and did not appear in person. There will therefore be no order as to costs.

Chua and Wee Chong Jin JJ. concurred.

Appeal dismissed.

X. Y. v. THE COMPTROLLER OF INCOME TAX, SINGAPORE

[O. C. J. (Buttrose J.) May 19, 1960]

[Singapore—Summons in Chambers No. 175 of 1960
& Summons in Chambers No. 177 of 1960]

Practice and Procedure — Specially indorsed writs — Income tax matter — Writ signed by Asst. Comptroller described as "plaintiff in person" — Whether there was contradiction on face of writ as to identity of plaintiff.

A In these applications the applicant sought for an order declaring the writs of summons in the action and all subsequent proceedings including the judgments to be void or alternatively that the same be set aside for invalidity or alternatively irregularity. The writs in question, both specially endorsed, were issued by the Comptroller against the applicant, and judgments were entered in default of appearance. The grounds on which the applications were based were: (i) the writs were not issued or signed by the plaintiff but by a person who was neither the plaintiff nor his solicitor; and (ii) there was a contradiction on the face of the writs as to the identity of the plaintiff.

B The facts were that in each case the plaintiff was the Comptroller of Income Tax and both writs purport on the face of them to be issued by the plaintiff. They were signed by one W. Gordon described as an Asst. Comptroller of Income Tax, Singapore, and then follow the words "Plaintiff in Person".

C The point for decision was whether the writs and statements of claim endorsed thereon have been signed by the plaintiff in conformity with the Rules of the Supreme Court.

D Held: Mr. Gordon did not sign the writs and statements of claim as Asst. Comptroller of Income Tax which was merely his official title which described his appointment in the Income Tax Department. He signed as therein stated, namely the plaintiff, i.e. the Comptroller of Income Tax, Singapore, in which term title or official name he was included by virtue of the definition in section 2 of the Income Tax Ordinance.

Comptroller of Income Tax v. Dia Singh (1) distinguished.

Case referred to:—

E (1) *Comptroller of Income Tax v. Dia Singh* [1960] M.L.J. 135, C.A.

APPLICATIONS by Summons.

S. H. D. Elias for the applicant.

Lim Chor Pee (Crown Counsel) for the respondent.

F Buttrose J.: These were two applications by summons in each case on the part of the defendant for an order declaring the writs of summons in the action and all subsequent proceedings including the judgments to be void or alternatively that the same be set aside for invalidity or alternatively irregularity.

G The writs in question, both specially endorsed, were issued by the Comptroller of Income Tax against the defendant on the 13th March 1958 and judgments were entered on the 22nd March 1958 in default of appearance. Bankruptcy Notices were then issued and served on the defendant on the 4th July 1958 and after security had been lodged to the satisfaction of the Comptroller these Notices were set aside on the 8th August 1958. Subsequently the judgments in both actions were paid and satisfied in full. Nothing further seems to have transpired in so far as these proceedings are concerned until the 22nd February 1960 when the two summons with which I am now concerned were taken out.

I The grounds on which the present applications are based are:—

(1) that the writs were not issued or signed by the plaintiff but by a person who was neither the plaintiff nor his solicitor; and